State of Maharashtra

Vs

Wasudeo and another

Civil Appeal No. 310 of 1976

(M.M. Punchhi, S.C. Agarwal)

25.10.1990

JUDGMENT

1.This appeal is directed against the judgment and order of the Bombay High Court dated 27-2-1975 passed in Special Application No. 961 of 1970 (Reported in AIR 1976 Bombay 94).

2. Wasudeo the first respondent owned 179 acres and 19 Gunthas of land in the State of Maharashtra. On 8-11-1961 Milind the second respondent was born to Wasudeo. On January 26, 1962 the Maharashtra Agricultural Lands (Ceiling on Holdings Act) 1961 (hereinafter referred to as the Act) came into force and that date is the "appointed date" for its working. The scheme of the Act is to determine the ceiling of each person, including that of a family, with reference to the appointed date. The ceiling limit so fixed is not liable to fluctuations ordinarily. Wasudeo filed a return of his holdings as required under the Act but it is not clear on the present record in what capacity whether as an individual or as head of his family. His son Milind filed a suit for partition in the Civil Court on 13-10-1965 claiming himself to be a member of the Hindu Joint Family consisted of himself and his father. That suit was decreed on 23-3-1967 holding that Milind was entitled to half share of the property by metes and bounds. The return filed by Wasudeo was held by the Collector of Revenue to be defective and the same was returned to him on 30th November, 1965 with a direction to file a fresh return. Wasudeo then filed a fresh return on 11-8-1967 pleading reduction of his area on account of the partition descree. The Revenue Tribunals in the hierarchy rejected his claim and reckoned his right on the axis of the appointed date. This led to at petition under Art. 226 of the Constitution being filed in the High Court for appropriate relief at the instance of both father and son. A single Bench of the Nagpur Bench of the High Court putting stronger emphasis on S. 8 of the Act held partition by means of Court decree to be outside the scope of prohibition imposed u/ S. 8 and thereupon ventured to leave two persons, i.e. father and son, separately in the field entitled to separate permissible area.

3. We have heard learned counsel .We are of the view that the High Court, with due respect, fell into an error in dominating S. 8 of th Act and interpreting it in isolation of the other provision, of the Act and in particular S. 4 which provides that no person shall hold land in excess of the ceiling area as determined in the manner provided in the Act. As said before the Act works on the appoint dated on that date, Wasudeo was either a person individually or a Hindu Undivided Family represented by him. In the former case of being an individual the claim of his son to have his father's property partitioned could never have arisen but in the later case of building a Hindu Undivided Family such a claim was valid. Nonetheless S. 4 imposes a prohibition even in the case of Joint Hindu Families from Holding land in excess of ceiling area and it is on that basis that the excess surplus blind

becomes available to be forfeited to the State under other provisions of the Act. S. 8 prohibiting that no person who on or after appointed date holds land in excess of ceiling area, shall on or after that date transfer or partition any land, until the land in excess of ceiling area is determined under the Act, facilitates the determination of the surplus area unhindered by any division of land by act of parties intervivos, as goes the Explanation, but nowhere takes away the paramountcy of S.4 of the Act. We find that in the judgment of the High Court though reference there made to the plenary character of 5. 4 yet no logical view is taken to come to the conclusion that partition effected through Court decree has the effect of diminishing surplus are giving two separate units to the father and son respectively. In this view of the matter we would prefer to have the matter re-examined by the High Court on all points afresh in the light of the observations made heretofore.

4. As a result this appeal is allowed, the judgment and order of the High court is set aside and the matter is remit A back for reconsideration. We would request the High Court to dispose of the Writ Petition expeditiously since it is a Land Reform matter which in the Constitutional scheme requires priority. In the circumstances there will be no order for costs.

Appeal allowed.

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